

LAW OFFICES  
HALEY BADER & POTTS P.L.C.

4350 NORTH FAIRFAX DR., SUITE 900  
ARLINGTON, VIRGINIA 22203-1633  
TELEPHONE (703) 841-0606  
FAX (703) 841-2345

POST OFFICE BOX 19006  
WASHINGTON, D.C. 20036-9006  
TELEPHONE  
(202) 331-0606

JAMES E. DUNSTAN  
ADMITTED IN DC AND VA

ORIGINAL

FEB 26 1996

OUR FILE NO.  
0080-108-63

February 26, 1996

Mr. William Caton, Acting Secretary  
Federal Communications Commission  
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Re: CS Docket No. 95-178  
Definition of Markets for Purposes of the Cable  
Television Mandatory Television Broadcast  
Signal Carriage Rules

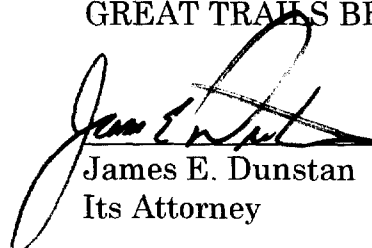
Dear Mr. Caton:

Submitted on behalf of Great Trails Broadcasting Corp., are an original and nine copies of their "REPLY COMMENTS," being filed in the above-referenced proceeding.

If there are any questions concerning this matter, please communicate directly with this office.

Respectfully submitted,

GREAT TRAILS BROADCASTING CORP.

  
James E. Dunstan  
Its Attorney

4/ 31 Copies rec'd  
13 1800E

44

Before The  
**Federal Communications Commission**  
Washington, D.C. 20554

ORIGINAL  
RECEIVED  
FEB 26 1996

In The Matter Of )  
 )  
Definition of Markets for Purposes of The )  
Cable Television Mandatory Television )  
Broadcast Signal Carriage Rules )

CS Docket No. 95-178

To: The Commission

**REPLY COMMENTS OF**  
**GREAT TRAILS BROADCASTING CORP.**

Great Trails Broadcasting Corp. ("Great Trails"), by its attorneys, hereby files these Reply Comments in the above-referenced proceeding. In support of these Reply Comments, Great Trails submits:

**I. SUMMARY**

There is strong support from commenters for Great Trails' position that television markets which have been modified pursuant to the Section 614(h) process (47 U.S.C. §614(h)) should survive any market changes engendered by adopting Nielsen DMAs over Arbitron ADIs to determine must-carry zones for the next three year period. All commenters who address the issue agree that such market-specific analyses should govern over the more general market definitions adopted by Nielsen.

On the larger issue of whether the FCC should define television markets according to DMAs, continued use of ADIs, or use ADIs for the next three year period and then switch to DMAs, commenters split. In general, most broadcasters appear to support switching to DMAs, while most cable interests support maintaining the status quo by freezing

television markets according to the ADIs which existed in 1991-1992. Unfortunately, there appears to be a strong disagreement as to the actual impact changing from ADIs to DMAs will have. Because it appears that switching methodologies will impact over half of all television markets, Great Trails continues to support the “compromise” position of continuing to use ADIs for one more three year cycle prior to changing over to DMAs.

## **II. COMMENTERS SUPPORT THE POSITION THAT THE COMMISSION SHOULD CONTINUE TO RECOGNIZE COMMUNITIES ADDED TO A STATION'S MUST-CARRY ZONE PURSUANT TO THE SECTION 614(h) PROCESS**

All commenters addressing this critical issue agree that whatever methodology is used in determining a station's must-carry zone, any individual television zones created by the FCC pursuant to the Section 614(h) process should take precedence. *NAB Comments*, pp. 2, 11-12; *Association of Local TV Stations Comments*, p. 7; *Roberts Broadcasting & Whitehead Media Comments*, p. 6; *Evening Post, Hubbard, and Paxson Communications Joint Comments*, p. 7; *KTEN Television Limited Partnership Comments*, pp. 6-7; *Diversified Communications Comments*, p. 6. All of these commenters recognize that the Section 614(h) special relief process results in a far more detailed analysis of the variables that determine the area a television station actually serves than does the audience ratings only-based methodology of Nielsen or Arbitron. To now disregard these decisions in favor of DMA definitions would undo three years of hard work by the Commission, and only cause the same parties to refile new petitions. As NAB has stated:

Where, however, a station or cable system has been subjected to an extensive station specific, community-by-community Section 614(h) must carry analysis (all of which have been conducted within the last 3 years), those determinations should remain in effect, unless and until a subsequent Section 614(h) proceeding demonstrates that a further modification is required. In other words, for example, if a station has obtained a Section 614(h) determination that cable systems in a specific community are a part of its market, such a determination would prevail regardless of its assignment to a DMA outside of where that community was located.

*NAB Comments*, pp. 11-12. NCTA is concerned that switching to DMAs as a basis for establishing must-carry zones would “throw into question the continued validity” of rulings in Section 614(h) cases. *NCTA Comments*, p. 7. These concerns can be obviated by a clear pronouncement by the Commission that must-carry zones established pursuant to the Section 614(h) process take precedence over Nielsen DMAs. Great Trails urges the Commission to make such a pronouncement.<sup>1</sup>

---

<sup>1</sup> A crystal clear enunciation of the hierarchy between DMAs and Section 614(h) modified zones is necessary because of the comments of such parties as Roberts Broadcasting and Whithead Media (Joint Comments), and Evening Post, Hubbard and Paxson Communications (Joint Comments). Both of these groups say that they support the recognition of Section 614(h) modified zones, but yet go on to state that “[i]f a particular community has been ruled to be outside a particular station’s market but is now within the market due to use of the DMA instead of the ADI, the DMA standard would govern.” *Roberts Broadcasting Comments*, p.6, n13; *Evening Post Comments*, p. 7, n15. Great Trails submits that this multiple bite of the apple approach constitutes unsound and illogical policy. If the Commission has concluded that a particular county lies outside a station’s must-carry zone pursuant to a full blown Section 614(h) analysis, then a subsequent change in DMAs should not override that decision, since Section 614(h) contains a four prong test which goes beyond just marketwide audience data. In short, a Section 614(h) determination should *always* take precedence over an audience study. If such an event occurs, however, a station would always be free to file a new Section 614(h) petition and reargue its case. Since viewership is a component of Section 614(h), a change in viewership patterns could well lead to the Commission concluding that cable communities within that county should be considered within a particular television station’s must-carry zone.

### III. DIFFERENT CONCLUSIONS AS TO THE ACTUAL IMPACT OF THIS ONE TIME SWITCH SHOULD GIVE THE COMMISSION PAUSE

Commenters are divided on what the actual impact of a one time change in methodology will have nationwide. NAB argues that 126 markets will be impacted by a change in methodology. *NAB Comments*, p. 4. Yet NAB argues that a change in over half the television markets supports the change in methodology. Similarly, Comments of the Christian Network allege that 122 markets would be impacted by a change in methodology. *Christian Network Comments*, p. 4. They, and others, argue that the Commission fully contemplated that television markets would change every three years. What neither NAB nor the Christian Network do, however, is determine how many of these changes are attributable to changes in viewing patterns, and how many are attributable to a one time change in methodology.

De Soto Broadcasting concludes that only between 30 and 40 counties change DMAs each year, impacting only one percent of television markets. *De Soto Broadcasting Comments*. Even if we were to assume that during a three year span this 30 to 40 county change was independent (i.e. that no county changed twice, a statistical improbability), then only three percent of television markets would be different today than they were in 1991-92. This is in stark contrast to the conclusions reached by both NAB and the Christian Network, that concluded that over half of all television markets would be impacted by a change in methodology. If all of these commenters are working with correct facts, then it would appear that the lion share of the changes

noted by NAB are the result, not of changing viewing patterns, but rather of the one time change of methodology from Arbitron to Nielsen.<sup>2</sup>

If the majority of changes are due to a change in methodology, then commenters' argument that the Commission meant for markets to change this radically every three years is not supported. Yes, the Commission determined that a fresh look at markets every three years was necessary to keep must-carry zones realistic. The Commission never contemplated in 1993, however, that the very first change in markets would result in over half of all markets being changed, not because of changing viewing patterns, but because of the differing ways Nielsen and Arbitron "crunched their numbers." In light of this, Great Trails continues to support the compromise alternative set forth by the Commission in the *NPRM* to continue to use the Arbitron 1991-92 ADI markets for one additional three year period to maintain a certain amount of stability, and then switch to Nielsen DMAs for the following three year period and thereafter. To do otherwise would be to introduce a level of market change not contemplated and unjustified after just a single three year period of adjustment to the new must-carry rules.

#### **IV. THE COMMISSION SHOULD STRICTLY ENFORCE THE STATUTORY "CLOSEST AFFILIATE" RULE**

Although no commenter even raises the issue, the comments generally serve to highlight the need for enforcement of the "closest affiliate" rule, contained in the 1992 Cable Act, 47 U.S.C. § 534(b)(2)(B),

---

<sup>2</sup> No party has conducted a thorough enough examination of every market to determine exactly which of the changes are attributable to changing viewership patterns and which are attributable to a change in methodology. Indeed, it may not be possible to conduct such an examination, since there are no longer up to date ADIs which could be compared against up to date DMAs.

and implemented in Section 75.56(b)(5) of the FCC's rules. 47 C.F.R. § 76.56(b)(5). This need is most highlighted by NCTA's Comments, in which they argue that a change to DMA methodology would greatly benefit Great Trails' WHAG.

Station WHAG in Hagerstown, MD would benefit greatly from a change in market definition. WHAG is part of the Hagerstown ADI (45,200 ADI TV households). Under the DMA system, WHAG would be included in the Wash., D.C. DMA because Hagerstown does not have its own DMA -- and would thereby gain over 1.5 million additional TV households. The addition of WHAG to the Washington DMA cable systems translates into channel line-up changes, dropped cable programming services and overall disruption for cable subscribers in this market.

*NCTA Comments*, pp. 7-8. What NCTA fails to consider is the fact that WHAG is an NBC network affiliate. Thus, although being moved into the Washington, D.C., DMA might increase WHAG's total television households, because of the nonduplication provisions of the must-carry rules, WHAG's cable carriage may not improve, since it must compete against the stronger Washington, D.C. network affiliate, WRC-TV. Moreover, without the protection of the closest affiliate rule contained in Section 76.56(b)(4)(ii), 47 C.F.R. § 76.56(b)(4)(ii), cable operators throughout the DMA, *including in WHAG's home county of Washington County, Maryland*, would be able to choose to carry the Washington, D.C., affiliate, instead of WHAG.

The impact of losing cable carriage in Washington County (and indeed in the counties which have been declared part of WHAG's must-carry zone pursuant to the Section 614(h) process), would be devastating to the station, and to the public as well. The events of this winter bear

this out. During the “Blizzard of 96,” WHAG was able to provide up to date information on road conditions, school closings, and other critical local information to its Maryland viewers as wave after wave of snow storms came through the region. How those storms affected WHAG’s service was often different than the effect in Washington, D.C., such that if Maryland residents had to rely on a Washington, D.C. station for weather information, they might well have been misled on critical issues such as school closings.

All of this highlights the fundamental need to protect the local service provided by television stations, especially those in outlying areas of large geographic markets. The only way this can be accomplished is to ensure that whatever stations a cable system *can* carry, they *must* carry the signals of the closest affiliate. The FCC therefore should take this opportunity to reaffirm the importance of the “closest affiliate” rule, and emphasize that it will vigorously and expeditiously dispose of complaints brought to it in which cable systems attempt to evade the statute.

## V. CONCLUSION

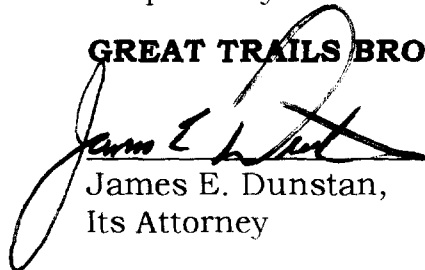
Based on the above, Great Trails urges the Commission to carefully consider the actual impact of changing methodologies, which will do more than merely track changing viewing patterns over the past three years. To minimize the jolt on television markets, Great Trails urges the Commission to continue to use ADIs for one more three year period. In any event, any change must be accompanied by an explicit declaration that the Commission will continue to apply the must-carry zones defined



pursuant to the Section 614(h) process, and will continue to apply the  
“closest affiliate” rule.

Respectfully Submitted,

**GREAT TRAILS BROADCASTING CORP.**



James E. Dunstan,  
Its Attorney

Haley Bader & Potts, P.L.C.  
4350 N. Fairfax Drive, Suite 900  
Arlington, VA 22203-1633  
(703) 841-0606

February 26, 1996